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PART IV

Section 1-A

BILLS INTRODUCED IN THE CENTRAL LEGISLATURE WHICH IF ENACTED WILL APPLY TO MYSORE AND THE REPORTS OF SELECT COMMITTEES, IF ANY, THEREON.

NOTIFICATION

No. L. D. 1320—Legis. 30-49-7, Bangalore, Dated 10th March 1950.

Ordered that the accompanying Preventive Detention Bill, 1950 (No. 12 of 1950) published in the Gazette of India, dated the 24th February 1950, be republished in the *Mysore Gazette*, for general information.

By Order of His Highness the Maharaja,

B. S. PUTTASWAMY,
Legal Remembrancer and Secretary to Government, Law Department.

PARLIAMENT OF INDIA

NOTIFICATION

New Delhi, the 24th February 1950.

No. F. 120-1—50-L.—Under Rule 55 of the Rules of Procedure and Conduct of Business in Parliament, the Speaker has been pleased to order the publication in the *Gazette of India* of the following Bill, together with the Statement of Objects and Reasons relating thereto, and the Bill and the Statement of Objects and Reasons are accordingly published for general information :—

BILL No. 12 OF 1950.

A Bill to provide for preventive detention in certain cases and matters connected therewith.

BE it enacted by Parliament as follows :—

1. **Short title, extent and duration.**—This Act may be called the Preventive Detention Act, 1950.

(2) It extends to the whole of India :

Provided that it shall not apply to the State of Jammu and Kashmir except to the extent to which the provisions of this Act relate to preventive detention for reasons connected with defence, foreign affairs or the security of India.

(3) It shall cease to have effect on the 1st day of April, 1951, save as respects things done or omitted to be done before that date.

2. **Definitions.**—In this Act, unless the context otherwise requires,—

(*a*) "State Government" means, in relation to a Part C State, the Chief Commissioner of the State ; and

(*b*) "detention order" means an order made under section 3.

3. **Power to make orders detaining certain persons.**—(1) The Central Government or the State Government may—

(*a*) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to—

(i) the defence of India, the relations of India with foreign powers, or the security of India, or

(ii) the security of the State or the maintenance of public order, or

(iii) the maintenance of supplies and services essential to the community, or

(*b*) if satisfied with respect to any person who is a foreigner within the meaning of the Foreigners Act, 1946 (XXXI of 1946), that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India, it is necessary so to do,

make an order directing that such person be detained.

(2) Any District Magistrate or Sub-Divisional Magistrate, or, in a presidency-town, the Commissioner of Police, may, if satisfied as provided in sub-clauses (*ii*) and (*iii*) of clause (*a*) of sub-section (1), exercise the power conferred by the said sub-section.

(3) When any order is made under this section by a District Magistrate, Sub-Divisional Magistrate or Commissioner of Police, he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the necessity for the order.

4. **Powers to regulate place and conditions of detention.**—So long as a detention order is in force in respect of any person, he shall be liable to be removed to, and detained in, such place and under such conditions, including conditions as to maintenance, discipline, and punishment for branches of discipline, as the Central Government or, as the case may be, the State Government, may from time to time by general or special order specify.

5. **Detention order not to be invalid by reason of place of detention.**—No detention order made by an officer mentioned in sub-section (2) of section 3 shall be deemed to be invalid merely by reason that the place of detention specified in the order is situate outside the limits of the territorial jurisdiction of such officer.

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6. Powers in relation to absconding persons.—If the Central Government or the State Government or an officer specified in sub-section (2) of section 3, as the case may be, has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, that Government or officer may—

(*a*) make a report in writing of the fact to a Presidency Magistrate or a Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 87, 88 and 89 of the Code of Criminal Procedure, 1898 (Act V of 1898), shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate;

(*b*) by order notified in the Official Gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order; and if the said person fails to comply with such direction he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year or with fine or with both.

7. Grounds of order of detention to be disclosed to persons affected by the order.—(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, communicate to him the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order, in a case where such order has been made by the Central Government, to that Government, and in a case where it has been made by a State Government or an officer subordinate thereto, to the State Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

8. Constitution of Advisory Board.—(1) The Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Act.

(2) Every such Board shall consist of two persons who are, or have been, or are qualified to be appointed as, Judges of a High Court, and such persons shall be appointed by the Central Government or the State Government, as the case may be.

9. Reference to Advisory Boards.—In every case where a detention order has been made under sub-clause (*iii*) of clause (*a*), or clause (*b*), of sub-section (1) of section 3, the Government making the order, or if the order has been made by an officer specified in sub-section (2) of section 3, the State Government to which such officer is subordinate, shall, within six weeks from the date of the order place before an Advisory Board constituted by it under section 8 the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer, also the report made by such officer under sub-section (3) of section 3.

10. Procedure of Advisory Board.—(1) The Advisory Board shall, after considering the materials placed before it and, if necessary, after calling for such further information from the Central Government or the State Government or from the person concerned, as it may deem necessary, submit its report to the Central Government or the State Government, as the case may be, within ten weeks from the date of the detention order.

(2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

(3) Nothing in this section shall entitle any person against whom a detention order has been made to attend in person or to appear by any legal representative in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

11. Confirmation of detention order.—In any case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of the person concerned, the Central Government or the State Government, as the case may be, may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

12. Duration of detention in certain cases.—(1) Any person detained in any of the following classes of cases or under any of the following circumstances may be detained without obtaining the opinion of an Advisory Board for a period longer than three months,

but not exceeding one year from the date of the detention order, namely, where such person has been detained with a view to preventing him from acting in any manner prejudicial to—

(*a*) the defence of India, relations of India with foreign powers or the security of India ; or.

(*b*) the security of a State or the maintenance of public order.

(2) The case of every person detained under a detention order to which the provisions of sub-section (1) apply shall, within a period of six months from the date of the order, be reviewed where the order was made by the Central Government or a State Government, by such Government, and where the order was made by any officer specified in sub-section (2) of section 3, by the State Government to which such officer is subordinate, in consultation with a judicial officer not below the rank of a District Judge nominated in that behalf by the Central Government or the State Government, as the case may be.

13. Revocation of detention orders.—(1) Without prejudice to the provisions of section 21 of the General Clauses Act, 1897 (X of 1897), a detention order may at any time be revoked or modified—

(*a*) notwithstanding that the order has been made by an officer mentioned in sub-section (2) of section 3, by the State Government to which that officer is subordinate or by the Central Government ;

(*b*) notwithstanding that the order has been made by a State Government, by the Central Government.

(2) The revocation of a detention order shall not bar the making of a fresh detention order under section 3 against the same person.

14. Disclosure of grounds of detention, etc.—(1) No court shall, except for the purposes of a prosecution for an offence punishable under sub-section (2), allow any statement to be made, or any evidence to be given, before it of the substance of any communication made under section 7 of the grounds on which a detention order has been made against any person or of any representation made by him against such order ; and notwithstanding anything contained in any other law, no court shall be entitled to require any public officer to produce before it, or to disclose the substance of, any such communication or representation made, or the proceedings of an

Advisory Board or that part of the report of an Advisory Board which is confidential.

(2) It shall be an offence punishable with imprisonment for a term which may extend to one year, or with fine, or with both, for any person to disclose or publish without the previous authorisation of the Central Government or the State Government, as the case may be, any contents or matter purporting to be contents of any such communication or representation as is referred to in sub-section (1):

Provided that nothing in this sub-section shall apply to a disclosure made to his legal adviser by a person who is the subject of a detention order.

15. Protection of action taken under the Act.—No suit prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done in pursuance of this Act.

STATEMENT OF OBJECTS AND REASONS.

There has been a crop of litigation in various States since the 26th January, 1950, challenging orders of detention passed under various State enactments dealing with public safety. In a recent judgment, the Bihar High Court has held that the provisions of the Bihar Act dealing with preventive detention are void as they are not in accordance with the Constitution. Similar points are being raised before other High Courts and it is considered necessary that the matter should be set at rest by Central Legislation.

2. The object of the Bill is to provide for detention with a view to preventing persons from acting in a manner prejudicial to the Defence of India, the relations of India with foreign powers, the security of India or a State, the maintenance of public order or the maintenance of supplies and services essential to the community. Provision is made, as enjoined by the Constitution, for the setting up of Advisory Boards. Provision has also been made under Article 22 (7) (*a*) of the Constitution for cases in which persons may be detained for longer than three months without obtaining the opinion of an Advisory Board.

NEW DELHI; V. J. PATEL.

24th February, 1950.

M. N. KAUL,
Secretary.

Printed by the Director of Printing, Stationery and Publications at the Government Press, Bangalore.